

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff(s),)	No. CR 10-00703 MMC (BZ)
)	
v.)	
)	DENIAL OF DEFENDANT'S
MICHAEL G. HIGGINBOTHAM,)	MOTION FOR RELEASE
)	
Defendant(s) .)	

On January 26, 2011, I heard a motion by defendant seeking his release. At the hearing, defendant was present and represented by Geoffrey Hansen, Deputy Public Defender. The government was represented by AUSA, Justin Rhoades. Pretrial Services was represented by Victoria Gibson.

On December 8, 2010, following a hearing, I revoked defendant's pretrial release bond pursuant to 18 U.S.C. § 3148(B) based on violations alleged in Ms. Gibson's memorandum dated November 22, 2010. I found by clear and convincing evidence that Mr. Higginbotham violated the condition of his bond that he not leave the halfway house except for limited purposes as authorized by Pretrial

1 Services.

2 The precise basis for yesterday's motion is unclear. To
3 the extent that it is a motion to reopen the detention hearing
4 pursuant to 18 U.S.C. § 3142(f), the government objected on
5 the grounds that the motion was not based on material
6 information not known to the movant at the time of the earlier
7 hearing. Defendant also stated that when he sought review of
8 my revocation order before Judge Chesney, he was directed to
9 seek a further hearing before me. To resolve an uncertainty
10 about why I had revoked his release, I allowed the hearing to
11 proceed without determining whether there was a legal basis
12 for it.

13 On November 19, 2010, the defendant left the Geocare
14 halfway facility at 9:00 a.m. He was authorized to leave to
15 attend a 10:00 a.m. medical appointment and then attend a
16 Pretrial Services/Bureau of Prisons informational seminar at
17 1:15 p.m. in this courthouse. Defendant was scheduled to
18 return to Geocare by 4:00 p.m. that same afternoon. Defendant
19 did not return to the halfway house until 7:00 p.m. Nor did
20 he attend the seminar or advise anyone of his whereabouts
21 until around 4:15 p.m. when he called Geocare and told a staff
22 member he would be there in around 30 minutes. Efforts by
23 Pretrial and Geocare to reach him were unsuccessful because he
24 had failed to notify them that he obtained a new cellular
25 telephone number, a direct violation of the Geocare phone
26 rules.

27 The next day, he told Ms. Gibson that he was late because
28 he had called his mother to get a ride to Geocare but she was

1 unable to help him. His mother, however, told Ms. Gibson that
2 she had given him a ride from the clinic to the bus stop. Not
3 only were their stories inconsistent, they made no sense to me
4 since the clinic was a block or two from the Muni T-Line,
5 which would have dropped him off a few blocks from the
6 courthouse or from Geocare.

7 Yesterday, defendant admitted that the reason that he did
8 not do what he was supposed to do on November 19, 2010 was
9 that he made an unauthorized visit to his son. While this is
10 a fact that he concealed at the revocation hearing, I do not
11 consider this to be grounds for seeking review under §
12 3142(f). Not only did he know about it at the revocation
13 hearing, it is not a fact that would have altered my decision
14 in his favor. To the contrary, it would have weighed in favor
15 of revocation. Defendant also proffered that in the near
16 future, there might be another person willing to act as his
17 custodian and provide a home for him in Daly City. Once
18 again, that would not have materially influenced my decision
19 to revoke his release, given his problems with supervision.

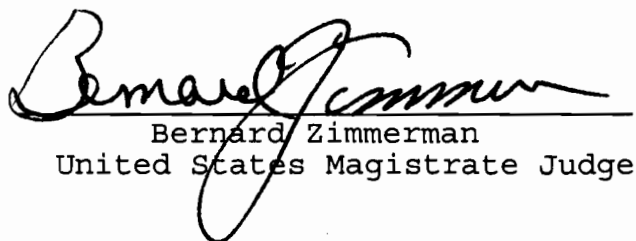
20 The undisputed evidence disclosed for the first time at
21 yesterday's hearing, is that the reason the story he told on
22 December 8, 2010 did not make sense is that he had actually
23 made an unauthorized visit to his son that day. The fact that
24 he did so was a violation of his pretrial release order and
25 the fact that he did not disclose the violation and instead
26 concocted a story to cover it up further persuades me, by
27 clear and convincing evidence, that he does not take
28 supervised release seriously and that he is not amenable to

1 supervision. To be clear, for the reasons given in the
2 December 8, 2010 revocation order and because I find by clear
3 and convincing evidence that his violations of his conditions
4 of pretrial release, his continued poor attitude towards
5 pretrial release, the fact that he does not seem to understand
6 that he has an affirmative responsibility to comply with the
7 conditions of release, and the inconsistencies of defendant's
8 statements regarding where he was on Friday, November 19,
9 2010, make him not amenable to supervision, his motion is
10 **DENIED.**

11 **IT IS THEREFORE ORDERED** that his bond remain revoked and
12 he is remanded to the custody of the U.S. Attorney General for
13 confinement in a correction facility separate, to the extent
14 practicable, from persons awaiting or serving sentences or
15 being held in custody pending appeal.

16 On order of the court of the United States or on request
17 of an attorney for the government, the person in charge of the
18 corrections facility in which defendant is confined shall
19 deliver him to an authorized Deputy United States marshal for
20 the purpose of an appearance in connection with a court
21 proceeding.

22 Dated: January 27, 2011

23 
24 Bernard Zimmerman
25 United States Magistrate Judge

26 G:\BZALL\CRIMINAL\ORDERS\ORDERS.2011\HIGGINBOTHAM DENIAL OF RECONSIDERATION
27 OF REVOKED RELEASE.BZ VERSION.wpd
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